(25,376)

20192

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 546.

BOSTON & MAINE RAILROAD, PLAINTIFF IN ERROR,

vs.

E. G. PIPER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 10, 1916.

1 STATE OF VERMONT:

Pleas of the Honorable Supreme Court of the State of Vermont, Begun and Held at Montpelier, in the County of Washington, on the First Tuesday of May, A. D. 1916, Being the 2nd Day of said Month and Being a General Term of said Court.

Present:

Hon. Loveland Munson, Chief Justice.
Hon. John H. Watson,
Hon. Seneca Haselton,
Hon. George M. Powers,
Hon. William H. Taylor,
Associate Justices.

Lewis C. Moody, Clerk of the General Term.
Rufus Wainwright, Clerk of the Supreme Court for the County of Addison.

On which day said Court was opened and continued its sessions from day to day, for the disposition of causes, until the 12th day of May, A. D. 1916, when the same was adjourned without day.
Attest:

RUFUS WAINWRIGHT, *Clerk.*

STATE OF VERMONT:

Supreme Court, Addison County, May Term, 1913.

Docket No. 2047.

ERWIN G. PIPER
v.
BOSTON & MAINE RAILROAD COMPANY.

Be it remembered that, on the 8th day of May A. D. 1913, comes the Boston & Maine Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and having its principal office in the City of Boston in the County of Suffolk and Commonwealth of Massachusetts, by W. B. C. Stickney and Edwin W. Lawrence, its attorneys, and files with the clerk for the County of Addison of the Supreme Court of the State of Vermont, at Middlebury, in said County, a certain amended bill of exceptions to a decision
2 and judgment of the County Court, within and for said County of Addison, rendered at a term thereof begun and held at Middlebury in the County of Addison, on the first Tuesday of December A. D. 1912, in a certain cause therein pending, wherein

Erwin G. Piper of said Middlebury is plaintiff and said Boston & Maine Railroad Company is defendant.

Which said bill of exceptions and the record of the said judgment of said County Court are in the words and figures following, to wit:—

STATE OF VERMONT:

Addison County Court, December Term, 1912.

Docket No. 2047.

ERWIN G. PIPER
v.
BOSTON & MAINE R. R. COMPANY.

Be it remembered that, at Middlebury in said County of Addison, on this 30th day of September A. D. 1912, comes Erwin G. Piper of Middlebury in the County of Addison by Allen R. Sturtevant and James B. Donoway, his attorneys, and brings into the County Court within and for said Addison County, his writ of summons and attachment in due form of law, dated the 9th day of September, 1912, against the Boston & Maine Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and having its principal office in the City of Boston in the County of Suffolk and Commonwealth of Massachusetts, a foreign corporation residing and being without the State of Vermont and leasing and in possession of a certain railroad corporation and the property thereof within the State of Vermont, to-wit, the Connecticut and Passumpsic River Railroad Company, to-wit, the Vermont Valley Railroad, and thereupon causes said writ to be entered and docketed by the clerk of said Court; upon which writ the officer's return of service is as follows:—

STATE OF VERMONT,
Addison County, ss:

The Boston & Maine Railroad Company *nor* being a resident of the State of Vermont, and not having appointed a person within said State upon whom process against said company might be served and not having filed a certificate with the Secretary of State of said State of Vermont, agreeing that legal process affecting said company served on said Secretary of State shall have the same effect as served personally upon said corporation or company within this State, and said Boston & Maine Railroad Corporation being the lessee of the Vermont Valley Railroad, said Railroad being operated by said defendant as such lessee, said railroad passing through the County of Windham and State of Vermont, so that said Boston & Maine Railroad Company is a foreig*h* corporation doing a shipping car business in said State of Vermont and having an agent at Rockingham, in the County of Windham and State of Vermont.

At Rockingham aforesaid on this 21st day of September A. D. 1912, I made service of this writ on the within named Boston & Maine Railroad Company, the defendant herein named, by delivering to W. F. Perley, office in A. R. Smith barge, the duly
3 authorized agent of said company, of Rockingham aforesaid, a station agent in the employment of the Boston & Maine Railroad Company, a true and attested copy of this writ, with this my return thereon, hereon endorsed, for the said Boston & Maine Railroad Company.

Attest:

N. J. SANFORD,
Deputy Sheriff.

By which writ and the service thereof the said defendant was duly summoned to appear before this Court in manner aforesaid, then and there to answer unto said plaintiff:

In a plea of the case for that the defendant on, to-wit, the 25th day of March A. D. 1912, was, and ever since said day and year has been, and now is, a corporation duly organized and existing by authority of law and having its principal offices at the City of Boston, in the County of Suffolk and the Commonwealth of Massachusetts, and said defendant on said day and year, and for a long time prior thereto, and during all the time of the committing of the grievences hereinafter set forth, was the operator of a certain railroad extending from the city of Boston aforesaid, to the Village of Bellows Falls in the town of Rockingham in the County of Windham and the State of Vermont, and the defendant was then and there, to-wit, on the day and year aforesaid, a common carrier of goods, chattels and freight over its said railroad for reward to it, the defendant, in that behalf, and then and there, to-wit, as aforesaid, held itself out as such common carrier and as such common carrier offered and undertook by means of its said railroad to transport goods, chattels and freight from said Bellows Falls to Union Market in Watertown in the County of Middlesex in the Commonwealth of Massachusetts, with reasonable dispatch and promptness and within a reasonable time for a reasonable reward to it, the defendant, in that behalf.

And the plaintiff avers that at the time of the committing of the grievances hereinafter set forth, there existed, and for many years prior thereto had existed at said Union Market, a public Market day for the sale of beef cattle, milch cows, poultry, fowls, hogs and calves, and that said market day as aforesaid, had been for many years prior thereto, and still continued to be at the time of the committing of said grievances, held on Tuesday of each week, and there also existed, and for many years prior thereto had existed, a certain other market day at Brighton in said Commonwealth of Massachusetts for the sale of milch cows, which said market day at the time of the committing of the grievances herein set forth, and for a long time prior thereto was held on Wednesday of each week.

And the plaintiff avers that on, to-wit, the day and year aforesaid,

the defendant held itself out as operating, and did operate over its said road, and for many years prior thereto had operated over its said road, a certain train, hereinafter for convenience called the stock train, on Monday of each week for the transporting and conveying as such common carrier by means of said stock train as aforesaid live cattle, cows, milch cows, beef cows and calves, hogs and other animals to said Union Market and other places, which said stock train according to the due and ordinary course of the operation thereof, should and would have arrived at said Union Market early of the morning of the day next following, to-wit, at three o'clock in the forenoon of the 26th day of March A. D. 1912, in sufficient time for the sale of said property at said markets on said market days thereof.

And the defendant then and there as aforesaid, as such common carrier held itself out and undertook by means of said stock train to carry such animals, and stock as should be offered to it for that purpose to said Union Market with reasonable dispatch and to use reasonable skill, care and diligence in the transportation thereof for the purpose of transporting said animals and stock to and delivering the same at said Union Market according to the due and ordinary course of the operation of said stock train and in
4 time for sale upon said market days.

And the plaintiff avers that on, to-wit, the 25th day of March, A. D. 1912, at certain stations on the line of the Rutland Railroad, a railroad extending from the City of Burlington in the County of Chittenden in the State of Vermont to said Bellows Falls, and connecting with the railroad of the defendant at said Bellows Falls, at certain stations on said road, to-wit, certain stations commonly called Vergennes, North Ferrisburgh, Ferrisburgh, New Haven, Middlebury, Salisbury, Orwell, Shoreham and Whiting, Leicester and Brandon, the plaintiff delivered to the Rutland Railroad Company then and there operating said railroad last aforesaid, and then and there engaged as a common carrier in the transporting of goods, chattels and merchandise for reward, and the said Rutland Railroad Company then and there received of and accepted from the said plaintiff for transportation on and by means of said stock train over its said railroad and over the railroad of the defendant as aforesaid, from said stations to said Union Market aforesaid, a large number of cattle, to wit, 10 milch cows, 1 beef cow, 1 beef cattle, and 55 calves, to-wit, all of the property of the plaintiff, and then and there of great value, to-wit, of the value of three thousand five hundred dollars ($3,500), which were then and there by the plaintiff shipped, designed and intended to be exposed and exhibited for sale at said Union Market and at said Brighton Market on said market days.

And the plaintiff avers that the said Rutland Railroad Company transported said cattle, cows, milch cows and calves over its said railroad to said Bellows Falls and delivered the same to said defendant at Bellows Falls, and the said defendant at Bellows Falls as aforesaid, on to-wit, the 26th day of March, A. D. 1912, aforesaid, as such common carrier received and accepted said cows, cattle, milch

cows and calves for transportation over its said railroad to said Union Market.

And the plaintiff avers that said defendant, to-wit, as aforesaid, accepted said cattle cows and calves to it delivered, as such common carrier, and in consideration of a large sum of money, to-wit, One Hundred Dollars ($100), by the plaintiff then and there as aforesaid for reward to it, the defendant, in that behalf paid, undertook as such common carrier to transport and convey said property to its said destination with dispatch and skill and within a reasonable time, and to exercise reasonable skill, diligence, foresight and promptness in and about transporting and conveying said property to said Union Market.

And the plaintiff avers that the said defendant, not regarding its said duty and undertaking, and not regarding its said duty in that behalf, did not transport and convey said property to said Union Market with dispatch and within a reasonable time, and did not exercise reasonable skill, diligence and foresight in and about transportation of said property, but therein wholly made default and was negligent in that the defendant so carelessly, negligently and improperly managed said stock train, and so carelessly and negligently neglected its said duty to operate and run said train with reasonable dispatch and speed and to operate the same with reasonable promptness that said stock train with and upon which the plaintiff's property as aforesaid was being transported was unreasonably and unnecessarily delayed and hindered and the same did not arrive at said Union Market with reasonable dispatch and within a reasonable time nor did the same arrive at said Union Market until a long space of time, to-wit, fifteen hours had elapsed from and after the time when said stock train in the due and ordinary course of the operation thereof should and would have arrived at said Union Market; and by reason thereof said property did not arrive at said Union Market in seasonable time to be exposed and offered for sale at said market on said market days.

And the plaintiff avers that by reason of the said negligence of the defendant, and by reason of the said property not being transported with reasonable speed and dispatch, and by reason of said negligent delay, said cattle, milch cows, beef cows and calves were greatly depreciated, shrunken and emaciated upon their arrival at said Union Market, and by reason thereof greatly lessened in value, and by reason thereof certain of said calves to-wit, three, then and there died and were wholly lost to the plaintiff, all of the value of fifty dollars.

And the plaintiff avers that had the said defendant then and there, to-wit, as aforesaid, performed and regarded its said duty and operated said stock train with reasonable speed, dispatch and skill, said stock train would have arrived at said Union Market in seasonable time for the disposal of said property at said market on the regular market days therefor, but that by reason of the carelessness, negligence and want of foresight of the defendant as aforesaid, and being wholly without fault himself, and being during all the time aforesaid in the exercise upon his part of due care and

prudence, he was deprived of the benefit of said market days and of the reasonable and proper values and prices for his said property which he would *have* otherwise have obtained thereat, and was compelled to and did sell and dispose of his said property then and there of great value to wit, of the value of Three Thousand Five Hundred dollars ($3,500) at a great sacrifice and greatly below the true value thereof, to wit, for the sum of Five Hundred Dollars ($500) below what the plaintiff would have obtained for his said property but for the negligence and want of care of the defendant as aforesaid.

And the plaintiff avers that by reason of said property not arriving at said Union Market in time for sale thereat on the market days thereof, the plaintiff was obliged to and did pay out and expend a large sum of money, to-wit, One Hundred Dollars in and about procuring said cattle, milch cows, beef cows and calves to be kept and supplied with food and water from and after their arrival at said Union Market until the same were sold and disposed of, which but for the negligence and want of care of the defendant the plaintiff would not have been compelled to do and would not have done.

And thereby the plaintiff was subjected to and did suffer great loss in the sum of, to-wit, Six Hundred Dollars, and was therein otherwise greatly damnified, all by reason of the carelessness, negligence and want of care of the defendant as aforesaid.

Also in a further plea of the case for that the defendant on to-wit, the 25th day of March, A. D. 1912, and ever since said day and year and now is, a corporation duly organized and existing by authority of law and having its principal office at the City of Boston in the County of Suffolk and the Commonwealth of Massachusetts, and said defendant on said day and year and during all the time of the committing of the grievances hereinafter set forth, was and still is the operator of a certain railroad extending in part from the Village of Bellows Falls in the Township of Rockingham, in the County of Windham and the State of Vermont to the City of Boston aforesaid and passing through Walpole and Keene in the County of Cheshire and State of New Hampshire, and through Fitchtion on the line of the defendant's sai drailroad in Watertown in the County of Middlesex in the Commonwealth of Massachusetts and the defendant was then and there, to-wit, on the day and year aforesaid, and during all of the time of the committing of the grievances hereinafter set forth, was and still is a common carrier of goods,
6 chattels and freight over its said railroad for reward to it, the defendant, in that behalf, and then and there to wit, as aforesaid, held itself out as such common carrier and as such common carrier offered and undertook by means of its said railroad to transport goods, chattels and freight from said Bellows Falls along the line of its said railroad to Union Market, a point or station on the line of the defendant's said railroad in Watertown in the County of Middlesex and Commonwealth of Massachusetts, with reasonable dispatch and promptness and within a reasonable time for a suitable reward to it, the defendant, in that behalf.

And the plaintiff avers that at the time of the grievences here-

inafter set forth there existed and for many years prior thereto had existed at said Union Market, a public market day for the sale of beef cattle, milch cows, calves and other animals and that said market day as aforesaid had been for many years prior thereto, and still continued to be at the time of the committing of said grievances held on Tuesday of each week.

And the plaintiff avers that at the time of the committing of the grievences hereinafter set forth there existed, and for many years prior thereto had existed at Brighton in said County of Suffolk, a public market for the sale among other things of milch cows and that the market day at said market for the sale of milch cows then was, and for many years prior thereto had been, held on Wednesday of each week, and said market at Brighton was adjacent to said Union Market, and said Union Market was one of the stations or points on the defendant's said railroad to which cows and other animals intended and destined for sale at said Brighton Market were accustomed to be shipped.

And the plaintiff avers that on to-wit, the day and year aforesaid, the defendant held itself out as operating, and did operate over its said road, and for many years prior thereto had operated over its said road, from Bellows Falls to said Union Market a certain train hereinafter for convenience called the stock train, for the transporting and conveying, as such common carrier, by means of said stock train as aforesaid, livestock, cattle, milch cows, beef cows, hogs, calves and other animals and stock to said Union Market and Brighton Market and other places, on Monday of each week, which said stock train according to the due and ordinary course of the operation thereof, should and would have arrived at said Union Market early in the morning of the day then next following, to-wit, at five o'clock in the forenoon of the Tuesday then next following, to-wit, the 26th day of March, A. D. 1912.

And the defendant then and there, to-wit, as aforesaid, as such common carrier held itself out and undertook by means of said stock train to carry such animals, milch cows, beef cows, and calves as should be delivered to it for that purpose to said Union Market, with reasonable dispatch and to use reasonable skill, care and diligence in the transportation thereof for the purpose of transporting said animals, stock, milch cows and calves to and delivering the same at said Union Market according to the due and ordinary course of the operation of said stock train and in time for sale on said market days.

And the plaintiff avers that on, to-wit, the 25th day of March, A. D. 1912, at certain stations on the line of the Rutland Railroad, a railroad extending from the City of Burlington in the County of Chittenden and State of Vermont to said Bellows Falls aforesaid, and connecting with the railroad of the said defendant at said Bellows Falls, to-wit, a certain station called North Ferrisburgh in the Town of Ferrisburgh, a certain station called Ferrisburgh in the Town of Ferrisburgh, a certain station called Vergennes in the City of Vergennes, a certain station called New Haven Junction in the town of New Haven, a certain station called Middlebury in the town

of Middlebury, a certain station called Salisbury in the town
7 of Salisbury, a certain station called Leicester Junction in the town of Leicester, a certain station called Orwell in the town of Orwell, a certain station called Shoreham in the Town of Shoreham and a certain station called Whiting in the town of Whiting, all in the County of Addison in the State of Vermont, the plaintiff delivered to the Rutland Railroad Company then and there operating said railroad herein designated and described as the Rutland Railroad, and then and there engaged as a common carrier of goods, chattels and merchandise for reward, and the said Rutland Railroad Company then and there received of and accepted from said plaintiff for transportation by means of said stock train over its railroad and over the railroad of the defendant to said Union Market aforesaid a large number of cows, to-wit, one beef cow of the value of sixty dollars and ten milch cows of great value, to-wit, of the value of Six Hundred Dollars, and a large number of calves, to-wit, 55 calves of great value, to-wit, of the value of Six Hundred Dollars which were then and there shipped, designed and intended to be exposed and exhibited for sale and sold at said Union Market and Brighton Market on said market days.

And the plaintiff avers that said Rutland Railroad Company transported said cows and calves over its said railroad to Bellows Falls and delivered the same to the defendant at Bellows Falls and the defendant at Bellows Falls, on, to-wit, said 25th day of March, A. D. 1912, as such common carrier received and accepted said cows and calves for transportation over its said railroad to said Union Market.

And the plaintiff avers that the said defendant, at, to-wit, as aforesaid, on, to-wit, the day and year aforesaid, accepted said cows and calves to it delivered as such common carrier and in consideration of a large sum of money, to-wit, the sum of one hundred dollars by the plaintiff then and there as aforesaid, for reward to it, the defendant, in that behalf paid, undertook as such common carrier to transport and convey said property to its said destination with dispatch and within a reasonable time, and to exercise reasonable skill, diligence, foresight and promptness in and about the transporting and conveying of said property to said Union Market.

And the plaintiff avers that said defendant not regarding its said undertaking and not regarding its said duty in that behalf, did not transport and convey said property to said Union Market with dispatch and within a reasonable time, and did not exercise reasonable skill, diligence and foresight in and about the transportation of said property, but therein wholly made default and was negligent in that the defendant so carelessly, negligently and improperly managed said stock train, and so carelessly and negligently neglected its said duty to operate and run said train with reasonable dispatch and speed and to operate the same with reasonable promptness that said stock train with and upon which the plaintiff's property as aforesaid was being transported was unreasonably and unnecessarily delayed and hindered and the same did not arrive at said Union Market with reasonable dispatch and within a rea-

sonable time, and in that the said defendant, its servants and employees caused said stock train containing the plaintiff's said property to be set out and side tracked and delayed at, to-wit, Bellows Falls, aforesaid, and the several stations along the line of said railroad between said Bellows Falls and said Union Market and detached said cars in which the plaintiff's property was then and there being transported from said stock train, and carelessly and negligently caused, allowed and permitted said cars to remain set out and detached and carelessly and negligently in so doing held and delayed said cars at, to-wit, said Bellows Falls, for a long space of time to-wit, three hours, to-wit, at Keene aforesaid in the State of New Hampshire and at Fitchburg in the State of Massachusetts and at other and various stations along the line of said railroad between said Bellows Falls aforesaid and said Union Market, twelve hours, whereby and by means of the aforesaid negligent acts
8 and doings of the defendant, its servants and employees, said stock was greatly and unreasonably and unnecessarily delayed in the transportation thereof, said cows and calves did not arrive at said Union Market until a long space of time, to-wit, twelve hours, had elapsed from and after the time when said stock train in the due and ordinary course of the operation of said stock train should and would have arrived at said Union Market, and by reason thereof said property did not arrive at said Union Market in seasonable time to be exposed and offered for sale at said market on said market days.

And the plaintiff avers that by reason of the negligence of the defendant as aforesaid, and by reason of said negligent delay, said cows and calves were greatly depreciated, shrunken and emaciated upon their arrival at said Union Market, and by reason thereof greatly depreciated in value, and certain of said calves, to-wit, three calves of the value of thirty dollars thereof died, and were wholly lost to the plaintiff.

And the plaintiff avers that if the said defendant then and there, to-wit, as aforesaid, had performed and regarded its said duty and operated said stock train with reasonable speed, dispatch and skill and had not carelessly and negligently allowed said cars in which said stock was being transported to be set out, held and detained at Bellows Falls aforesaid and at the other and several stations along the line of said railroad aforesaid, for a great space of time, to-wit, as aforesaid, said stock train and said cars with the plaintiff's said property therein as aforesaid would have arrived at said Union Market in seasonable time for the disposal thereof, for that by reason of the carelessness, negligence and want of reasonable diligence upon the part of the defendant as aforesaid, and being wholly without fault himself, and being during all the time aforesaid, in the exercise upon his part of due care and prudence, he was deprived of the benefit of said market days and of the reasonable and proper values and prices for his said property which he would have otherwise have obtained from the sale thereof at said markets on said market days, and was compelled to, and did, sell and dispose of his said property then and there of

great value to-wit, of the value of three thousand five hundred dollars, at a great sacrifice and greatly below the true market value thereof, to-wit, for the sum of Five Hundred Dollars less than he would have received and obtained therefor, and by reason of the premises aforesaid and the wrongful and negligent acts and defaults of the defendant as aforesaid, and by reason of the plaintiff's said property not arriving at said Union Market within a reasonable time the plaintiff was obliged to pay out a further large sum of money, to-wit, the sum of One Hundred Dollars, in and about procuring said cattle and calves to be kept and supplied with necessary food, water and maintenance until the same could be, and were sold and disposed of which but for the negligence and want of care and diligence the plaintiff would not have been compelled to and would not have done.

And thereby and by reason of the aforesaid premises the plaintiff was subjected to and did suffer great loss in the sum of to-wit, Seven Hundred Dollars, and was therein otherwise greatly damnified, all by reason of the carelessness, negligence and want of care of the defendant as aforesaid.

All of which is to the damage of the plaintiff in the sum of eight hundred dollars, for the recovery of which together with just costs the plaintiff brings suit.

9 And now at Middlebury in the County of Addison aforesaid on the 9th day of October, 1912, comes the said defendant by Wm. B. C. Stickney, its attorney, and enters its appearance in said cause with the clerk of said County Court.

And day thereof is given, etc., until the term of said County Court begun and held at Middlebury within and for said Addison County on the first Tuesday of December A. D. 1912. And now at said last mentioned term here comes said plaintiff by his said attorneys to prosecute said suit; also comes the defendant by Wm. B. C. Stickney and Edwin W. Lawrence, its attorneys, and by leave of Court files in said cause its plea and notice which is in the words and figures following, to-wit:—

STATE OF VERMONT,
Addison County, ss:

December Term, 1912.

Docket No. 2047.

E. G. PIPER
v.
BOSTON & MAINE RAILROAD.

And the said defendant by leave of Court, by Edwin W. Lawrence, its attorney, comes and defends the wrong and injury when, etc., and saith that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof, in

manner and form as the said plaintiff hath above thereof complained against it. And of this, it, the said defendant, puts itself upon the country, etc.

BOSTON & MAINE RAILROAD,
By EDWIN W. LAWRENCE,
Its Attorney.

And the said defendant according to the statute in such case made and provided gives notice that on the trial of this action, it will give in evidence and rely, in its defence, upon the following matter:—

That said plaintiff delivered his said cattle, cows and calves, referred to in said declaration, to the said Rutland Railroad Company, to be transported from stations on said Rutland Railroad referred to in said declaration to said Union Market in the State of Massachusetts, on to-wit, said 25th day of March, 1912, under and pursuant to an agreement, and said Rutland Railroad Company received them at said station and transported them to Bellows Falls, Vermont, under and pursuant to such agreement and said defendant received them at said Bellows Falls and transported them to said Union Market, under and pursuant to such agreement, which was signed by said plaintiff and reads as follows, to wit:

"Form No. G. F. D. 101.
T. Co.—1-30-'09—5 M.

Rutland Railroad Company.

10 *Uniform Live Stock Agreement.*

MIDDLEBURY, VT., STATION, 3/25, 1912.

This agreement, made this 25th day of March 1912, by and between the Rut. R. R. Co. *Company*, hereinafter called the carrier, and E. G. Piper, hereinafter called the shipper:

Witnesseth, that the said shipper has delivered to the said carrier Live Stock of the kind and number and co-signed and destined by said shipper as follows:

Consignee, destination, etc.	Number and description of stock, shipper's load and count.	Weight, subject to correction.
E. G. Piper Union Market Mass.	Cattle O R Released	20000 Ordinary Value.

Advanced Charges, $—.
Car Nos. and Initials Rut 1957.

for transportation from Middlebury, Vt. to destination, if on the said carrier's line of railroad, otherwise to the place where said live stock are to be received by the connecting carriers for transportation to or toward destination, and that the same has been received by said

carrier for itself and on behalf of connecting carriers, for transportation, subject to the official tariffs, classifications and rules of the said company, and upon the following terms and conditions, which are admitted and accepted by the shippers as just and reasonable, viz:

That said shipper, or the consignee, is to pay freight thereon to the said carrier at the rate of M. $42.00 per car which is the lower published tariff rate based upon the express condition that the carrier assumes liability on the said Live Stock to the extent only of the following agreed valuation, upon which valuation is based the rate charge for the transportation of the said animals, and beyond which valuation neither the said carrier nor any connecting carrier shall be liable in any event, whether the loss or damage occur through the negligence of the said carrier, or connecting carriers, or their employees, or otherwise.

If horses or mules—not exceeding one hundred dollars each.

If cattle or cows—not exceeding seventy five dollars each.

If fat hogs or fat calves—not exceeding fifteen dollars each.

If Sheep, lambs, stock hogs, stock calves, or other small animals—not exceeding five dollars each.

And in no event shall the carrier's liability exceed twelve hundred dollars upon any carload.

That the shipper is to pay all back charges and freight paid by said carrier or connecting carrier upon or for the transportation of said Live Stock.

That the said shipper is at his own sole risk and expense to load and take care of and to feed and water said stock whilst being transported, whether delayed in transit or otherwise, and to unload the same; and neither said carrier or any connecting
11 carrier is to be under any liability or duty with reference thereto, except in the actual transportation of the same.

That the said shipper is to inspect the body of the car or cars in which said stock is to be transported and satisfy himself that they are sufficient and safe, and in proper order and condition, and said carrier or any connecting carrier shall not be liable on account of any loss of, or injury to said stock, happening by reason of any alleged insufficiency in, or defective condition of the body of said car or cars.

That said shipper shall see that all doors and openings in said car are at all times so closed and fastened as to prevent the escape therefrom of any of the said stock, and said carrier or any connecting carrier shall not be liable on account of the escape of any of the said stock from said car or cars.

That said carrier or any connecting carrier shall not be liable for, or on account of any injury sustained by said live stock occasioned by any or either of the following causes, to-wit; Overloading, crowding one upon another, kicking or goring, suffocating, fright, burning of hay or straw or other material used for feeding or bedding, or by fire from any cause whatever, or by heat, cold, or by changes in weather, or for delay caused by stress of weather, by obstructing of track, by riot, strikes or stoppage of labor, or from causes beyond their control.

That in the event of any unusual delay or detention of said live stock, caused by the negligence of the said carrier, or its employees, or its connecting carriers, or their employees, or otherwise, the said shipper agrees to accept as full compensation for all loss or damage sustained thereby the amount actually expended by said shipper in the purchase of food and water for the said XX stock, while so detained. That no claim for damages which may accrue to the said shipper under this contract shall be allowed or paid by the said carrier or sued for in any court by the said shipper, unless a claim for such loss or damage shall be made in writing, verified by the affidavit of the said shipper or his agent, and delivered to the Frt. Claim Agt. *agent* of the said carrier, at his office in Rutland Vt. within five days from the time the said stock is removed from said car or cars; and that if any loss or damage occurs upon the line of a connecting carrier, then such carrier shall not be liable unless a claim be made in like manner, and delivered in like time, to some proper officer or agent of the carrier on whose line the loss or injury occurs.

That whenever the person or persons accompanying said stock under this contract, to take care of the same, shall leave the caboose and pass over or along the cars or track of said carrier, or of connecting carriers, they shall do so at their own sole risk of personal injury, from whatever cause, and neither the said carrier nor its connecting carriers shall be required to stop or start their trains or caboose cars at or from the depots or platforms, or to furnish lights for the accommodation or safety of the persons accompanying said stock to take care of the same, under this contract.

And it is further agreed by said shipper, that in consideration of the premises and of the carriage of a person or persons in charge of said stock upon a freight train of said carrier, or its connecting carrier, without charge other than the sum paid or to be paid for the transportation of the Live Stock in his or their charge, that the said shipper shall and will indemnify and save harmless said carrier and every connecting carrier, from all claims, liabilities and demands of every kind, nature and description, by reason of personal injury sustained by said person or persons so in charge of said stock, whether the same be caused by the negligence of said carrier or any connecting carrier, or any of its or their employees, or otherwise.

And E. G. Piper does hereby acknowledge that he had the option of shipping the above described Live Stock at a higher rate of
12 freight according to the official tariffs, classifications and rules of the said carrier and connecting carriers, and thereby receiving the security of the liability of the said carrier and connecting railroad and transportation companies as common carriers, of the said Live Stock upon their respective roads and lines, but has voluntarily decided to ship the same under this contract at the reduced rate of freight above first mentioned.

THE RUTLAND R. R. COMPANY,
By P. S. MURRAY,
Station Agent.

Witness my hand.
E. G. PIPER, *Shipper.*

Contract with Man or Men in Charge of Live Stock.

In consideration of the carriage of the undersigned upon a freight train of the carrier or carriers named in the within contract, without charge, other than the sum paid or to be paid for the carriage upon said freight train of the live stock mentioned in said contract, of which live stock in charge, the undersigned do hereby voluntarily assume all risk of accidents or damage to person or property, and do hereby release and discharge the said carrier or carriers from every and all claims, liabilities and demands of every kind, nature and description, for, or on account of any personal injury or damage of any kind sustained by the undersigned so in charge of said live stock whether the same be caused by negligence of the said carrier or carriers, or any of its or their employees, or otherwise.

E. G. PIPER,
Signature of Man in Charge.

—— ——, *Witness.*"

That more than thirty days prior to the time when the plaintiff delivered to said defendant and said defendant received from said plaintiff and transported as aforesaid the cattle, cows and calves, referred to in said declaration, to wit, more than thirty days before said 25th day of March, 1912, the said Rutland Railroad Company had duly filed with the Interstate Commerce Commission, a printed joint commodity tariff, to-wit, I. C. C. No. 2055, and the said defendant had duly filed its printed concurrence therein with said Interstate Commerce Commission, to wit, concurrence F x 3-No. 46, which said tariff and concurrence applied to shipments of live stock in carloads from Rutland Railroad stations, Ogdensburg, New York, Ticonderoga, New York, and Bennington, Vermont and intermediate points to Boston & Maine stations (Fitchburg division) as shown in said tariff including Union Market, Massachusetts, via Bellows Falls, Vermont, and Boston & Maine Railroad, and were governed by official classification I. C. C. O. C. No. 31, supplements thereto and reissues thereof with certain exceptions set out in said tariff.

That more than thirty days prior to the time when said plaintiff delivered to said defendant and said defendant received from said plaintiff and transported as aforesaid, the said cattle, cows and calves, referred to in said declaration, to wit, more than thirty days before said 25th day of March A. D. 1912, the said Rutland Railroad Company had duly filed with the Interstate Commerce Commission a printed tariff, I. C. C. No. 2014, providing in part, that when live stock are shipped in car load lots, the car may be stopped in transit at stations on the Rutland Railroad on direct runs to load at the rate of $1.00 per car, for each stop upon terms and conditions therein set out.

13 That more than thirty days prior to the time when the plaintiff delivered to said defendant and the said defendant received from said plaintiff and transported as aforesaid the said cattle, cows and calves, referred to in said declaration, to-wit, more

than thirty days before said 25th day of March, 1912, the said defendant and said Rutland Railroad Company had duly filed with the Interstate Commerce Commission a printed official classification, I. C. C.—O. C. No. 38, which was a reissue of said official classification I. C. C.—O. C. No. 31, and supplements thereto.

Said tariffs, I. C. C. No. 2055 and I. C. C. No. 2014 and said official classification, I. C. C. O. C. No. 38 had been for a long time prior to said 25th day of March, 1912, in full force and effect and had not been modified or changed in any respect prior to said delivery by said plaintiff and receipt and transportation by said defendant of said cattle, cows and calves, referred to in said declaration, but were in full force and effect at the time thereof.

Said tariff, I. C. C. No. 2055 and said official classification provided a rate of $42. for the transportation of a carload of cattle, cows and calves not exceeding twenty thousand pounds in aggregate weight, when all or a part of said carload of live stock was loaded at the following stations or any of them, to wit, North Ferrisburgh, Ferrisburgh, Vergennes, New Haven Junction, Beldens and Middlebury all in the State of Vermont, destined to the said Union Market, when the consignor accepts and signs the uniform live stock agreement set out in full in said official classification, I. C. C. O. C. No. 38, which said uniform live stock agreement is the same as the one set out above, which the said plaintiff signed.

Said tariff, I. C. C. No. 2055, and said official classification also contained the following provisions, to wit:

"If consignor refuses to execute a uniform live stock contract the live stock will be charged ten per cent higher than the reduced rates specified herein, provided that in no case chall higher charge be less than one cent per hundred pounds."

More than thirty days prior to the time when the plaintiff delivered to said defendant and the said defendant received from said plaintiff and transported, as aforesaid, the said cattle, cows and calves, referred to in said declaration, to wit, more than thirty days before said 25th day of March, 1912, and at all times subsequent thereto until after the transportation, as aforesaid, of said live stock for said plaintiff, the said tariffs and classifications had been duly posted and published by keeping open to public inspection, printed copies thereof at the depots or offices, where freight thereunder was received for shipment on the railroad of said Rutland Railroad Company and at said stations mentioned in the plaintiff's declaration where said cattle were shipped.

That on, to wit, the second day of April, 1912, the plaintiff filed with Mr. H. F. Bidwell, the claim agent for the defendant at Boston, Massachusetts, a claim on account of alleged delay to the said shipments of live stock referred to in said declaration as follows, to wit;

"MIDDLEBURY, VERMONT, March 29, 1912.

Boston & Maine Railroad to E. G. Piper.

Damage caused by demurrage on,—	
10 Fresh Milch Cows & Calves @ $10.00	$100.00
14	
1 Beef Cow, 600# plus 50# shrinkage ¢ ½	3.25
Extra shrinkage, caused by demurrage on 1 Beef Cow 50# ¢ 3¢	1.50
55 Calves, 4650# ¢ 1¢ (decrease on market price)	46.50
Extra shrinkage, caused by demurrage, on 55 Calves ¢ 10# per calf—55# @ 8¢ per lb.	44.00
	$195.25

And that said claim is the only claim in writing or otherwise, which has been filed with the defendant or any of its agents, or made to the defendant or any of its agents, by said plaintiff or any one in his behalf prior to the service of the said writ.

BOSTON & MAINE RAILROAD,
By EDWIN W. LAWRENCE, *Its Attorney.*

And the issues in said cause having been joined, whereof the said parties have put themselves upon the Country: Therefore let a jury come, etc. And the jurors of the jury being summoned come, to-wit: Clinton P. Boynton, Mark H. Hill, Chas. J. Fisk, L. C. Perkins, A. E. Whitney, Ray M. Stokes, Arthur D. Parkill, Henry Vancor, Henry O. Fisher, H. D. Jones, Frank Charlton and George Dragon, all good and lawful men of the County of Addison who being duly impanelled and sworn upon their oath say that the defendant is guilty in manner and form as the plaintiff in his declaration has alleged. They therefore find for the plaintiff to recover of the defendant the sum of $195.25, with interest from March 27, 1912, to date, damages, and his costs.

Whereupon it is considered and adjudged by the Court that said plaintiff recover of said defendant his damages, by the jury aforesaid assessed, together with his costs in this behalf laid out and expended which are to be taxed by the clerk of said Court and that plaintiff may have execution thereof.

And thereupon the said defendant comes by Edwin W. Lawrence, its attorney and excepts to the rulings and determination of this Court upon the several issues and questions of law arising upon the trial of said cause. And thereupon it is ordered by this Court that the several issues and questions of law arising in the said
15 trial as aforesaid be passed to the Supreme Court of this State and that execution be stayed until after the hearing and final determination of said exceptions by said Supreme Court.

RUFUS WAINWRIGHT, *Clerk.*

And day thereof is given, etc., until a General Term of said Supreme Court for said County of Addison, begun and held at Montpelier in the County of Washington on the first Tuesday of May A. D. 1913. And now at said last mentioned term here comes the said plaintiff by his said attorneys; also comes the defendant by Edwin W. Lawrence, its attorney, and submits to said Court its amended bill of exceptions to the decision and judgment of said County Court, hereinbefore set forth. Said amended bill of exceptions follows in these words, to-wit:

STATE OF VERMONT,
Addison County, ss:

December Term, 1912.

E. G. PIPER
v.
BOSTON & MAINE R. R. Co.

Amended Bill of Exceptions.

Action to recover for negligent delay of about eight hours in transportation of cattle from Middlebury, Vermont, to Union Market, Massachusetts, in March, 1912. Plaintiff alleges he was damaged because he obtained less for his cattle on the market than he would if the train had been on time and he could have put his cattle on the market earlier. Plaintiff's evidence tended to show that the market for this class of cattle was held at the place of destination only once per week, and that when the cattle arrived, owing to the delay of transportation and the condition of the cattle, it was impossible to seasonably place the same upon the market, and it was not possible to procure the market prices for the cattle that would have been had if said train had arrived at its said destination at its customary and usual time. Plaintiff's evidence also tended to show that the cattle by reason of the extra delay were shrunken in weight and damaged in reference to their quality of being saleable by reason of the extra hardship incolved in the delay of transportation.

Plea, the general issue with notice of special matter in defence.

Plaintiff's evidence also tended to show that he shipped a carload of cattle as alleged, and that they were delayed on defendant's road because of its negligence, and that he suffered damages as alleged.

Verdict and judgment for Plaintiff. Exceptions by defendant.

16 Plaintiff claimed that his evidence also tended to show that defendant required him to sign the contract called the "Uniform Live Stock Contract" before it would move the cattle and that this was the only contract which he could procure from the defendant in connection with the shipment of cattle. The defendant claimed otherwise and the transcript is referred to for the purpose of showing the tendency of the evidence upon this point. Said contract provided in part as follows:

"The same has been received by said carrier for itself and on

behalf of connecting carriers for transportation subject to official tariffs, classifications and rules of the said company and upon the following terms and conditions, which are admitted and accepted by the said shipper as just and reasonable. * * *

That in the event of any unusual delay or detention of said live stock caused by the negligence of said carrier or its employees or its connecting carriers or their employees or otherwise the said shipper agrees to accept as full compensation for all loss or damage sustained thereby the amount actually expended by said shipper in the purchase of food and water for said stock while so detained. * * * And E. G. Piper hereby acknowledges that he had the option of shipping the above described live stock at a higher rate of freight according to the official tariffs, classifications and rules of the said carrier and connecting carriers and thereby receiving the security of the liability of the said carrier and connecting railroad and transportation companies as common carriers of the said live stock upon their respective roads and lines, but has voluntarily decided to ship same under this contract at the reduced rate of freight above first mentioned."

It also appeared that the tariffs of the defendant and Rutland Railroad Company filed, published and posted according to the provisions of the United States Statutes, provided for a rate of Forty Two Dollars for such a shipment and that a part of said tariffs, called the "Official Classification," contained a copy of the Uniform Live Stock Contract and the following:

1. (A) In order that the consignor may have the option of shipping property, either subject to the terms and conditions of the Uniform Bill of Lading hereinafter set forth or under the liability imposed upon common carriers by the common law and the federal and state statutes applicable thereto, the official classification provides for different rates and for different forms of bills of lading to be used, respectively, as the consignor may elect to have a limited liability or a common carrier's liability service.

(B) Unless otherwise provided in this classification, property will be carried at the reduced rate specified if shipped subject to all the terms and conditions of the Uniform Bill of Lading (see pages 22 and 24). If the consignor elects not to accept all the terms and conditions of a Uniform Bill of Lading, he should so notify the agent of the forwarding carrier at the time his property is offered for shipment. If he does not give such notice, it will be understood that he desires his property carried subject to the terms and conditions of the Uniform Bill of Lading in order to secure the reduced rate.

(C) Property carried not subject to all the terms and conditions of the Uniform Bill of Lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several States in so far as they apply, but subject to the terms and conditions of the Uniform Bill of Lading in so far as they are not inconsistent with such common carrier's liability, and the rate charged therefor will be ten per cent, (10%)

higher (subject to a minimum increase of one (1) cent
17 per hundred pounds) than the rate charged for property shipped subject to all the terms and conditions of the Uniform Bill of Lading (see note).

(D) When the consignor gives notice to the agent of the forwarding carrier that he elects not to accept all the terms and conditions of the Uniform Bill of Lading, but desires a carrier's liability service at the higher rate charged for that service, the carrier must print, write or stamp upon the Bill of Lading a clause reading: "In consideration of the higher rate charged, the property herein described will be carried at the carrier's liability, limited only as provided by law, but subject to the terms and conditions of the Uniform Bill of Lading in so far as they are not inconsistent with such common carrier's liability."

(E) The cost of insurance against marine risk will not be assumed by carriers unless specifically provided for in the tariffs.

(NOTE.)—In computing the rate to be charged upon property shipped not subject to the terms and conditions of the Uniform Bill of Lading, ten (10) per-cent of the reduced rate shall be added thereto (subject to a minimum increase of one (1) cent per one hundred pounds). If the result includes a fraction of one cent, it shall be expressed decimally in tenths of one cent; for example if the reduced rate is twenty-one cents per hundred pounds the rate to be charged when shipped not subject to the terms and conditions of the Uniform Bill of Lading will be twenty three (23) and one tenth (23.1) cents per one hundred pounds; if the reduced rate be sixteen and one half (16½) cents per one hundred pounds, the higher rate will be eighteen and one-tenth (18.1) cents per one hundred pounds; if the reduced rate is ten (10) cents per one hundred pounds, the higher rate will be eleven (11) cents per one hundred pounds; if the reduced rate is four (4) cents per one hundred pounds, the increase will be the minimum increase of one (1) cent per one hundred pounds, and the higher rate to be charged will be five (5) cents per one hundred pounds.

Live stock will be taken at the reduced rates fixed in the tariff only when a uniform Live Stock contract is executed by the station agent and the consignor, and when the release on the back of said contract is executed by the man or men who are to accompany said live stock. If the consignor refuses to execute a Uniform Live Stock Contract, the live stock will be shipped ten (10) per-cent higher than the reduced rate specified herein provided, that in no case shall such higher charge be less than one (1) per-cent per one hundred pounds.

All of the evidence tending to show delay in transporting the cattle and the causes for the delay was received subject to the defendant's objection and exception, viz: because it was offered for the purpose and will result in varying the terms of the written agreement under which the shipment in question was made, and because

it was offered for the purpose of and will result in varying the provisions of the tariff published in accordance with law.

All the evidence tending to show damages was received subject to the same objection and exception by the defendant.

The plaintiff neither alleged or attempted to prove damages resulting from the expenditure of money for food and water for said stock while in transit.

Plaintiff's evidence tended to show that for the past twenty years he had shipped live stock over said defendant's road; that during the past eight years he had shipped weekly over said route;
18 that in order to feed or water cattle shipped in the manner in which this shipment was made, it is necessary to first unload the cattle from the car and to have a place furnishing facilities for so doing, and for feeding and watering. The plaintiff claimed that his evidence further tended to show that between Bellows Falls (or Cold River, which is in the Railroad yards at Bellows Falls), the commencement of defendant's route, to the Union Market, the destination, there was no place at which it was possible to either feed or water the cattle while in transit, and no facilities whatever provided by defendant for feeding and watering said cattle. The defendant claimed otherwise and the transcript is referred to for the purpose of showing the tendency of the evidence upon this point.

Plaintiff's evidence further tended to show that the carload of cattle was delivered to the defendant at Bellows Falls, on time, and at the hour when such delivery from said stock train was due according to the regular schedule of the above train; that all the delay was caused by defendant's negligence between Bellows Falls and Union Market during the remainder of the journey; that the stock train was accustomed to be run on such a schedule that would bring it to the destination in time for the market, all which was uncontradicted.

Subject to defendant's objection and exception, plaintiff was allowed to testify that he knew the car could not go without signing the Uniform Live Stock contract, because he had before got on to trains when he forgot to sign, and they came and called him and told him the car could not go without it, and subject to objection and exception by defendant, was allowed to make the following answer to the following question:

Q. Had you had any dealings or experience with the officials or agents of the road prior to March 25, 1912, whereby you had gained a knowledge as to whether the live-stock,—whether there was any way a loaded car of live stock could go from Middlebury to Union Market other than signing this contract?

Objected to as to substance.

Admitted. Exception by defendant.

A. I have always known those cars wouldn't be moved unless the contract was signed.

With reference to the plaintiff's option to ship livestock from said Middlebury to Union Market under different rates, one Murray, a

station agent for the defendant at Middlebury, testified with respect to signing said Uniform Live Stock Contract as follows:

Q. Is that a correct statement of fact that they are required to sign that?

A. Yes.

The defendant claims that this quotation does not give a correct idea of the testimony of this witness, as a whole, and the transcript is hereby referred to for the purpose of showing the tendency of the evidence upon this point.

Plaintiff's evidence also tended to show that the form of contract known as the "Uniform Livestock Contract" was the only one under which the railroad agent at Middlebury, who received this shipment, had authority to receive and accept shipments, and that the same was the regular form of contract, and the regular rate, and not a reduced rate.

19 Where particular portions of the testimony are quoted in this bill of exceptions, the transcript of the testimony on such points is referred to for the purpose of showing the true tendency of the evidence.

At the close of all the evidence the defendant filed the following motion:

Now comes the defendant, by Edwin W. Lawrence, its attorney, and moves that the jury be directed to return a verdict for it, upon the following grounds:

(1) There was no evidence that the defendant was negligent in the respects alleged in the declaration.

(2) Under the contract under which the plaintiff shipped and the defendant received and transported said livestock the plaintiff can recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and such damages are not alleged in the declaration.

(3) Under the contract under which the plaintiff shipped and defendant received and transported said livestock the plaintiff can recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and there is not any evidence tending to show any such damage.

(4) Under the tariffs, filed and published accerding to law, under which plaintiff shipped and defendant received and transported said livestock the plaintiff can recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and such damages are not alleged in the declaration.

(4) Under the tariffs, filed and published according to law, under which plaintiff shipped and defendant received and transported said live-stock the plaintiff can recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and there is not any evidence tending to show any such damage.

(6) Upon all the evidence there is no question for the jury.

(7) The terms of the Uniform Live-Stock Contract as to damages for delay cannot be held by this Court to be void because it has not been shown that the Interstate Commerce Commission has ever ruled to that effect and such agreement is a part of the tariffs duly filed with the Interstate Commerce Commission, and duly published according to law.

Motion overruled. Defendant excepted. Defendant requested the Court to charge as follows:—

(1) The plaintiff can recover only in accordance with the terms of the Uniform Live Stock agreement which he signed.

(2) The plaintiff can recover only in accordance with the terms of the tariff containing the Uniform Live Stock Agreement under which he shipped the live stock which are the subject matter of this suit and for the transportation of which he paid the law rate provided in the tariff.

(5) The plaintiff cannot recover anything because of al-
20 leged shrinking or emaciation of his said live stock.

(6) The plaintiff cannot recover anything because of alleged loss of market.

At the conclusion of the charge the defendant severally excepted to the refusal of the Court to charge as requested in its requests Nos. 1, 2, 5, and 6.

The defendant also excepted to the charge of the Court to the effect that the clause in the live stock contract limiting the amount of damages which may be recovered in case of delay, is not binding, and except to the submission of the case to the jury.

The entire transcript, including the charge of the Court and exhibits is hereby referred to and made a part of this bill of exceptions, upon which said exceptions, and motions as well for the purpose of testing the accuracy of the statements of the meaning and tendency of the evidence, *and* for the purpose of showing the objections made and the exceptions taken, and as to all such matters, said transcript is to control.

It was agreed by the parties that the transcript and charge need not be printed and it is so ordered.

Execution stayed and cause passed to the Supreme Court.

These exceptions allowed in amendment of and in substitution for the bill of exceptions of March 21, 1913.

Dated May 7, 1913.

WILLARD W. MILES,
Presiding Judge.

And now at said last mentioned term of said Supreme Court, all and singular, the premises being seen and by the Court fully understood, etc. For that it is proved and appears to the Court here that there had been no error in said proceedings of the County Court, therefore,

It is considered and adjudged by said Supreme Court that said judgment of the County Court be affirmed and that the plaintiff recover of the defendant the amount of his judgment as awarded by said County Court, together with the interest thereon due and with

additional costs in this Court to be taxed by the clerk and that plaintiff may have execution thereof.

RUFUS WAINWRIGHT, *Clerk.*

21 STATE OF VERMONT,
Addison County:

Supreme Court.

Docket No. 2047.

E. G. PIPER
v.
BOSTON & MAINE R. R. CO.

On the 13th day of June, 1916, at Middlebury in said County of Addison the opinion of the Court in the above entitled cause is filed with the Clerk of the Supreme Court for the County of Addison. Said opinion is in the words and figures following, to wit:—

POWERS, *J.:*

The plaintiff shipped a carload of cows from Middlebury, Vt. to Union Market, in the State of Massachusetts. The Rutland Railroad hauled the car to Bellows Falls, where it turned it over to the defendant. Owing to the negligence of the latter, the shipment was unduly delayed and did not arrive at its destination until after the market had closed for the week, and the cows had to be kept over. This fact, together with the fact that they were unfavorably affected by the delay, caused the damage which the plaintiff seeks to recover in this action. The shipment was made under what is known as the "Uniform Live Stock Contract" which contains among others, the following provisions: "The same has been received by said carrier for itself and on behalf of connecting carriers for transportation subject to official tariffs, classifications and rules of the said company, and upon the following terms and conditions, which are admitted and accepted by the said shipper as just and reasonable * * * That in the event of any unusual delay or detention of said live stock caused by the negligence of said carrier or its employees or its connecting carriers or their employees, or otherwise, the said shipper agrees to accept as full compensation for all loss or damage sustained thereby, the amount actually expended by said shipper in the purchase of food and water for said stock while so detained * * * And E. G. Piper hereby acknowledges that he had the option of shipping the above described live stock at a higher rate of freight according to the official tariffs, classifications and rules of the said carrier and connecting carriers, and thereby receiving the security of the liability of the said carrier and connecting railroad and transportation companies as common carriers of the said live stock on their respective roads and lines, but has voluntarily decided to ship same under this contract at the reduced rate of freight above first mentioned."

It appeared that the tariffs in effect at the time of this shipment, both those of the defendant company and those of the Rutland, provided for a rate of $42 per car when shipment was made under the Uniform Live Stock Contract, and a certain higher rate, otherwise; that these tariffs were duly filed, published, and posted agreeably to the requirements of the Acts of Congress; and that a part of said tariffs so filed, published and posted, known as the "Official Classification No. 38," contained a copy of the Uniform Live Stock Contract, together with the rules covering shipments thereunder, and otherwise.

The question presented is this: In the circumstances shown, is the limitation of liability above set forth legal and binding?

22 The fact that the contract was made with the Rutland and not with the defendant is of no consequence, since any valid limitation of liability made by the initial carrier inures to the benefit of the successive carriers in the chain of transportation. Kansas City Southern Ry. Co. v. Carl 227 U. S. 639, 57 L. ed. 683; Harrison Granite Co. v. Grand Trunk Ry. System, (Mich.) 141 N. W. 642; Cranov v. Southern Ry. Co., (Ga.) 78 S. E. 1014. The contract involved being for an interstate shipment, the laws of Congress and the decisions of the United States Supreme Court are, of course, so far as applicable, binding upon us. The paramount authority of Congress over the whole subject matter of interstate carriage, and contracts and regulations regarding the same, is nowhere denied. If Congress omits action, room is left for the application of local laws and policies. Chicago, M. & St. P. Ry. Co. v. Solan, 169 U. S. 133, 42 L. ed. 688; Penn. R. Co. v. Hughes, 191 U. S. 477, 48 L. ed. 268. But once Congress acts, all such laws and policies are suspended and its action becomes controlling. Adams Express Co. v. Croninger, 226 U. S. 491, 57 L. ed. 314; Chicago, B. & Q. Ry. Co. v. Miller, 226 U. S. 513, 57 L. ed. 323; St. Louis & S. F. R. Co. v. Woodruff Mills, (Miss.) 62 So. 171; Missouri, K. & T. Ry. Co. v. Harris, 234 U. S. 412, 58 L. ed. 1377.

That Congress has acted and taken over the whole subject matter as to supersede all special regulations, laws and policies of particular States upon the subject of the carrier's liability for loss or damage to interstate shipments and contracts of carriage with respect thereto, is now established without question. Adams Express Co. v. Croninger, supra; Chicago B. & Q. R. Co. v. Miller, supra; Chicago, St. P. M. & O. R. Co. v. Latla, 226 U. S. 519, 57 L. ed. 328; Wells F. & Co. v. Neiman Marcus Co., 227 U. S. 469, 57 L. ed. 600; Kansas City So. Ry. Co. v. Carl, supra; Missouri, K. & T. R. Co. v. Harriman, 227 U. S. 657, 57 L. ed. 690; Chicago, R. I. & P. R. Co. v. Cramer, 232 U. S. 508; Boston & M. R. v. Hooker, 233 U. S. 97; Missouri, K. & T. R. Co. v. Harris, supra.

It is, therefore, wholly unnecessary to inquire what the standing of the stipulation in question would be before our law, for it is to be tested solely by the Federal Law.

By the common law as declared by the Federal Supreme Court, a carrier may, by a fair, open, just and reasonable agreement, limit the amount recoverable by a shipper, in case of loss or damage, to

an agreed value made for the purpose of obtaining the lower of two or more rates proportioned to the risk. Adams Express Co. v. Croninger, supra, and cases cited. This right of an interstate carrier still exists, and is not forbidden or effected by the Interstate Commerce Acts Ib.; C. B. & Q. R. Co. v. Miller, supra; Missouri, K. & T. R. Co. v. Harriman, supra.

At common law the burden was on the carrier to show that the contract was fair, open, just and reasonable. Cleveland, etc., Ry. Co., v. Blind, (Ind.) 105 N. E. 483. Such, however is not the law of this case. For here, the rates, schedules and regulations were prepared and filed agreeably to the requirements of the Federal statutes. They have, therefore, so far as they are consistent with the law, all the force and standing of Federal enactments. Penn. R. Co. v. International Coal Mining Co., 230 U. S. 184, 57 L. ed. 1466; Nye v. Daniels, 75 Vt. 81; Taft v. Taft, 82 Vt. 64; State v. Peet 80 Vt. 449; Provisions repugnant to the law, if any, do not, of course have this standing. See Interstate Com. Com. v. Un. Pac. R. Co., 222 U. S. 541, 56 L. ed. 308. Subject to this exception, so long as they remain in force, as to all their contents thus required and approved by law, they are conclusively presumed to be,—they are, in the eye
23 of the law, fair, just and reasonable, and proff of this fact is not required. Kansas City So. R. Co. v. Carl, supra; Missouri, K. & T. R. Co. v. Harriman, supra; Great Northern R. Co. v. O'Connor, 232 U. S. 508, 58 L. ed. 703; Chicago, R. I. & P. Co. v. Cramer, supra; Atchison, T. & S. F. Ry. Co. v Robinson, 233 U. S. 173, 58 L. ed. 901; Cleveland, C. C. & St. L. Ry. Co. v. Blind, supra; Wabash R. Co. v. Priddy, (Ind.) 101 N. E. 724. "We are not concerned," says Mr. Justice Hughes in Southern Ry. Co. v. Campbell, 239 U. S. 99, a case involving tariff regulations relating to mileages filed with the Interstate Commerce Commission, "with the reasonableness of the rule; that if challenged, would be a question for the Interstate Commerce Commission." The shipper may attack the rate or classification before the Commission, and, if either or both are found unreasonable, secure a modification thereof; but so long as they stand, they are binding on shipper and carrier alike, and must be enforced by the Courts in all proceedings to establish the rights of the parties. Geo. N. Pierce Co. v. Wells, Fargo & Co., 236 U. S. 278, 59 L. ed. 576. Both must take notice of and observe them, in the same way and to the same extent as would be required in the case of an Act of Congress, Kansas City So. R. Co. v. Carl, supra; Cleveland, etc., Ry. Co. v. Hayes, (Ind.) 102 N. E. 24, and no agreement for different rates or terms is binding. Atchinson, T. & S. F. Ry. Co. v. Robinson, supra. Nor does gross disproportion between the actual value and the stipulated value effect the rule. Geo. N. Pierce Co. v. Wells, Fargo & Co., supra.

So far, then, as the case before us depends upon the reasonableness of the provisions in question, the argument of the defendant is sound, and if nothing more was involved the case would be with the defendant. But it is not now, any more than formerly, possible for a carrier to make a binding agreement stipulating against its own negligence or that of its servants. Such agreements are prohibited

by section 20 of the so-called Carmack Amendment. Adams Express Co. v. Crininger, supra; Kansas City Southern Ry. Co. v. Carl, supra; Bernard v. Adams Express Co., (Mass.) 91 N. E. 325; Cook v. N. P. Ry. Co., (N. D.) 155 N. W. 867.

And an agreement to release a carrier from a part of the loss due to such negligence is no more valid than one making the exemption complete—Kansas City So. Ry. Co. v. Carl, supra; Stipulation- for an agreed value, however, when made the basis of the rate, are not agreements for exemptions from negligence, and are given effect upon the ground of estoppel. Ib.

It thus appears that if the agreement before us is, in legal effect, a contract exempting the carrier, in whole or in part, from its negligence, it is repugnant to law and the fact that it is a part of the regulations filed with and approved by the Interstate Commerce Commission gives no more force or validity; it is wholly inoperative and void.

It is to be observed that it is not a provision limiting recovery to an agreed valuation; at least it is not such in form, and we think it is not such in essence. In form it is a stipulation against negligence; and we think that in legal effect it is such. The evidence tended to show that the unreasonable delay was due to the negligence of the company, and to give effect to the provision in question would be to excuse, in part if not wholly, this shortage of duty on the part of the carrier. As applied to the case made by the evidence it was an arbitrary preadjustment of the damages for a negligent delay of the shipment and void. Bosley v. B. & O. R. Co. (W. Va.) 66 L. R. A. 871; Jennings v. Grand T. Ry., 5 N. Y. S. 140.

Judgment affirmed.

24 STATE OF VERMONT:

I certify that the foregoing is a true copy of the opinion of the Supreme Court of the State of Vermont in E. G. Piper vs. Boston & Maine Railroad.

LOVELAND MUNSON,
Chief Justice of the Supreme Court.

Afterwards, that is to say, on the 13th day of June A. D. 1916, again comes the defendant and files with the clerk of said Supreme Court for the County of Addison its petition for a writ of error and supersedeas in the above entitled case, to the Supreme Court of the United States. Said petition is in the words and figures following, to wit:—

STATE OF VERMONT:

Supreme Court.

E. G. PIPER
v.
BOSTON & MAINE RAILROAD.

Petition for a Writ of Error.

The Boston & Maine Railroad, defendant in the above entitled cause, feeling itself aggrieved by the judgment of the Supreme Court of the State of Vermont, entered on the 12th day of May, 1916, comes now by Edwin W. Lawrence, Esq., its attorney, and petitions said Court for an order allowing said defendant to procure a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, for the correction of the errors complained of as more specifically set forth in the assignment of errors, and also that an order be made fixing the amount of security which the said defendant shall give and furnish upon said writ of error, and that upon the giving of such security all other proceedings in this Court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray.

BOSTON & MAINE RAILROAD,
By LAWRENCE, LAWRENCE & STAFFORD,
Its Attorneys.

And on the same day an order under the hand of the Chief Justice of the Supreme Court of Vermont, staying the judgment in said cause, was filed with the clerk of said Supreme Court for the County of Addison and is as follows, to wit:—

STATE OF VERMONT:

Supreme Court.

25 E. G. PIPER
v.
BOSTON & MAINE RAILROAD.

Order Allowing Writ of Error.

Upon motion of Edwin W. Lawrence, Esq., attorney for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that the writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein on the twelfth day of May, 1916, and that the amount of bond in said writ be and hereby is fixed at Four Hundred Dollars, and the bond presented is hereby

approved, and the judgment rendered herein is hereby stayed until final determination of said writ of error.

Dated at Manchester, Vermont, this 6th day of June, 1916.

LOVELAND MUNSON,
Chief Justice of the Supreme Court of Vermont.

And on the same day, the 13th day of June A. D. 1916, the defendant files with the clerk of said Supreme Court for the County of Addison the supersedeas bond mentioned in the foregoing order which is in the words and figures following, to-wit:

STATE OF VERMONT:

Supreme Court.

E. G. PIPER
v.
BOSTON & MAINE RAILROAD.

Supersedeas Bond.

Know all men by these presents, That We, the Boston & Maine Railroad, defendant in the above entitled cause, as principal, and William J. Hobbs, of Malden, Massachusetts, as Surety, are held and firmly bound unto the said E. G. Piper, in the full and just sum of Four Hundred Dollars, to be paid to said E. G. Piper, for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our hands and dated this 2nd day of June A. D. 1916.

Whereas, lately at a general term of the Supreme Court of the State of Vermont, in a suit pending in said Court, between said E. G. Piper, as aforesaid, plaintiff, and said Boston & Maine Railroad, defendant judgment was rendered against the said Boston & Maine Railroad, and the said Boston & Maine Railroad, having prayed for and been allowed a writ of error to reverse the judgment in the aforesaid suit, and a citation having been issued directed to the said E. G. Piper citing and admonishing him to be and appear in the Supreme Court of the United States in the City of Washington within thirty days from the date thereof.

Now, therefore, the condition of the above obligation is
26 such, that if the said Boston & Maine Railroad shall prosecute its writ of error to effect and answer all damages and costs, if it fails to make its plea good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

[Seal of B. & M. R.]

BOSTON & MAINE RAILROAD,
By JAMES H. HUSTIS, *President.*
By WILLIAM J. HOBBS, *Surety.*

Signed and Sealed in the presence of
A. B. NICHOLS.
W. A. KNIPE.

Bond approved this 6th day of June A. D. 1916, and citation issued.

LOVELAND MUNSON,
Chief Justice of the Supreme Court of Vermont.

And on said 13th day of June, 1916, said defendant files with the clerk of said Supreme Court for the County of Addison the assignment of errors in the above entitled cause which are in the words and figures following:—

STATE OF VERMONT:

Supreme Court.

E. G. PIPER
v.
BOSTON & MAINE RAILROAD.

Assignment of Errors.

Comes now the Boston & Maine Railroad, defendant in the above entitled cause, and files the following assignment of errors, upon which it will rely in the prosecution of its writ of error therein.

I.

The Supreme Court of the State of Vermont erred in allowing judgment for plaintiff.

II.

The Court erred in failing and refusing to grant judgment to defendant.

III.

The Court erred in affirming judgment of the County Court for the plaintiff.

IV.

The Court erred in failing and refusing to reverse the judgment of the County Court.

27

V.

The Court erred in holding as follows:

"But it is not now, any more than formerly, possible for a carrier to make a binding agreement stipulating against its own negligence

or that of its servants. Such agreements are prohibited by Section 20 of the so called Carmack Amendment," and applying that holding in this case adversely to defendant.

VI.

The Court erred in holding as follows:

"An agreement to release a carrier from a part of the loss due to such negligence is no more valid than one making the exemption complete, meaning by the words "such negligence" the negligence of the carrier, and applying that holding in this case adversely to defendant.

VII.

The Court erred in holding as follows:

"It thus appears that if the agreement before us is, in legal effect, a contract e*m*empting the carrier, in whole or in part, from its negligence, it is repugnant to the law and the fact that it is a part of the regulations filed with and approved by the Interstate Commerce Commission gives it no force or validity; it is wholly inoperative and void."

VIII.

The Court erred in holding as follows:

"It is to be observed that it is not a provision limiting recovery to an agreed valuation; at least it is not such in form, and we think it is not such in essence."

IX.

The Court erred in holding as follows:

"In form it is a stipulation against negligence; and we think that in legal effect it is such."

X.

The Court erred in holding as follows:

"To give effect to the provisions in question would be to excuse, in part, if not wholly, this shortage of duty on the part of the carrier," by the words "This shortage" meaning unreasonable delay due to the negligence of the company.

XI.

The Court erred in holding as follows:

"As applied to the case made by the evidence it was an arbitrary preadjustment of the damages for a negligent delay of the shipment, and void," by the word "It" meaning the provision in the Uniform Live Stock Contract providing "That in the event of any unusual delay or detention of said live stock caused by the negligence of said carrier or its employees, or its connecting carriers, or

their employees, or otherwise, the said shipper agrees to accept as full compensation for all loss or damage sustained thereby, the amount actually expended by said shipper in the purchase of food and water for said live stock while so detained."

XII.

The Court erred in holding that the provision of the Uniform Live Stock Contract relied upon by the defendant was an agreement against negligence prohibited by the so called Carmack agreement and void.

XIII.

The Court erred in holding that the provision of the tariff relied upon by the defendant was an agreement against negligence prohibited by the so called Carmack agreement and void.

XIV.

The Court erred in failing and refusing to hold as claimed by defendant as follows:

(*a*) Under the contract under which plaintiff shipped and defendant received and transported said live-stock, the plaintiff can
28 recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and such damages are not alleged in the declaration.

(*b*) Under the contract under which plaintiff shipped and defendant received and transported said live-stock the plaintiff can recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and there is not any evidence tending to show any such damage.

(*c*) Under the tariffs filed and published according to law, under which plaintiff shipped and defendant received and transported said live-stock the plaintiff can recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and such damages are not alleged in the declaration.

(*d*) Under the tariffs, filed and published according to law, under which plaintiff shipped and defendant received and transported said live-stock the plaintiff can recover for the alleged delay in transportation only the amount expended by him in the purchase of food and water for said stock while detained by said alleged delay and there is not any evidence tending to show any such damage.

(*e*) The terms of the Uniform Live-Stock Contract as to damages for delay cannot be held by this Court to be void because it has not been shown that the Interstate Commerce Commission has ever ruled to that effect and such agreement is part of the tariffs duly filed with the Interstate Commerce Commission, and duly published according to law.

(*f*) The plaintiff can recover only in accordance with the terms of the Uniform Live Stock Agreement which he signed.

(*g*) The plaintiff can recover only in accordance with the terms of the tariff containing the Uniform Live-Stock Agreement under which he shipped the live-stock which are the subject matter of this suit and for the transportation of which he paid the lower rate provided in said tariff.

(*h*) The plaintiff cannot recover anything because of alleged loss of market.

LAWRENCE, LAWRENCE & STAFFORD,
Attorneys for Defendant.

And on the 13th day of June A. D. 1906, in accordance with the prayer of the petition of said defendant, a writ of error to the Supreme Court of the United States, allowed by the Chief Justice of the Supreme Court of the State of Vermont and issued by the clerk of the Circuit Court of the United States for the District of Vermont, was filed with the clerk of the Supreme Court of the State of Vermont for the County of Addison, and also at the same time
29 and place a copy thereof was lodged for the plaintiff, the said Erwin G. Piper.

And on the 23rd day of June A. D. 1916, a citation directed to the said E. G. Piper and signed by the Chief Justice of the Supreme Court of the State of Vermont and by the clerk of said Court for the County of Addison, under seal of the Court, has been returned into Court with service thereof duly accepted in writing under the hand of said E. G. Piper.

UNITED STATES OF AMERICA:

Supreme Court of Vermont, County of Addison.

I, Rufus Wainwright, Clerk of the Supreme Court of the State of Vermont for the County of Addison, the same being a Court of Record and having a seal, hereto attached, do hereby certify that the above and foregoing are full, true and correct copies of the records of said County and Supreme Courts in the case therein entitled and of the opinion of said Supreme Court in said case; also of the petition for a writ of error and the order allowing the same, supersedeas bond, assignment of errors and prayer for reversal and of all the proceedings had in the cause of the Boston & Maine Railroad, plaintiff in error vs. E. G. Piper, as the same remains of file and record in the office of the clerk of said Court, together with the original writ of error and the original citation with acceptance of service thereof; and I herewith transmit the same to the Supreme Court of the United States.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Supreme Court of the State of Vermont for

said County of Addison, at Middlebury, this 24th day of June A. D. 1916.

[Seal Supreme Court, State of Vermont.]

RUFUS WAINWRIGHT, *Clerk.*

30 [Endorsed:] Boston & Maine Railroad, Plaintiff in Error, v. E. G. Piper. From the Supreme Court of the State of Vermont, County of Addison.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Supreme Court of the State of Vermont, Greeting:

Because of the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Vermont, before you at the May General Term of 1916, thereof, being the highest Court of law or equity of the said State in which a decision could be had in a suit between the Boston & Maine Railroad, defendant and plaintiff in error, and E. G. Piper, plaintiff and defendant in error, (1) Wherein the validity of an authority exercised under the United States was drawn in question, and the decision was against its validity, and (2) wherein also a title, right, privilege or immunity was claimed under the constitution or statutes of the United States, and the decision was against the right, title, privilege or immunity especially set forth or claimed under such constitution or statutes, and (3) Wherein also was drawn in question the construction of Statutes of the United States, namely the original so called Interstate Commerce Act of Feb. 4, 1887, 24 Statutes at large, 379, Chapter 104, and all amendments thereof, and especially the amendment thereto by the Act of June 29, 1906, 34 Statutes at large, 584, Chapter 3591, and particularly Section 20 of said Act of June 29th, 1906, commonly known as the Carmack Amendment, and rights, privileges, immunities and exemp-
32 tions were claimed thereunder by the defendant and the decision was against the said rights, privileges, immunities and exemptions, especially set up under said Statutes, a manifest error has happened to the great damages of the said Boston & Maine Railroad, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, District of Columbia, before the Supreme Court on the United States on or before thirty days from the date hereof to the end that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 5th day of June, A. D., 1916, and of the Independence of the United States the one hundred and fortieth.

[Seal of the U. S. District Court, Dist. of Vermont.]

FREDERICK S. PLATT,

Clerk of District Court of the United States, District of Vermont.

Allowed.

LOVELAND MUNSON,

Chief Justice of the Supreme Court of Vermont.

33 [Endorsed:] 2047. E. G. Piper v. Boston & Maine R. R. Supreme Court, Addison County. Writ of Error. Lawrence, Lawrence & Stafford, Attorneys-at-law, Rutland, Vermont. Filed June 13, 1916. Rufus Wainwright, Clerk.

34 STATE OF VERMONT:

Supreme Court.

E. G. PIPER.
v.
BOSTON & MAINE RAILROAD.

Citation.

The President of the United States to E. G. Piper, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the City of Washington in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Vermont, in a suit wherein E. G. Piper is plaintiff, and the Boston & Maine Railroad is defendant, to show cause, if any you have, why the judgment of the Supreme Court in the said writ of error mentioned, should not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Dated at Manchester, Vermont, this 6th day of June, A. D., 1916.

LOVELAND MUNSON,
Chief Justice of the Supreme Court of the State of Vermont.

Attest:

[Seal Supreme Court, State of Vermont.]

RUFUS WAINWRIGHT,
Clerk of the Supreme Court of the State of Vermont, for Addison County.

35 At Middlebury, in the County of Addison, State of Vermont, on this 23rd day of June, A. D., 1916, I hereby accept service of the foregoing citation upon me, E. G. Piper, and waive all other and different service thereof.

E. G. PIPER,
(Personally.)

36 [Endorsed:] 2047. E. G. Piper v. Boston & Maine Railroad Co. Supreme Court, Addison County. Citation. Filed June 23, 1916. Rufus Wainwright, Clerk.

Endorsed on cover: File No. 25,376. Vermont Supreme Court. Term No. 546. Boston & Maine Railroad, plaintiff in error, vs. E. G. Piper. Filed July 3d, 1916. **File No. 25,376.**

Office Supreme Court, U. S.
FILED
FEB 11 1918
JAMES D. MAHER,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. [redacted]208

BOSTON & MAINE RAILROAD, PLAINTIFF IN ERROR,

vs.

E. G. PIPER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

BRIEF OF PLAINTIFF IN ERROR.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 546

BOSTON & MAINE RAILROAD, PLAINTIFF IN ERROR,

vs.

E. G. PIPER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

BRIEF OF PLAINTIFF IN ERROR.

The plaintiff shipped a carload of cattle from Middlebury, Vermont, to Union Market, Mass., paying $42 freight charges and signing a uniform live-stock agreement providing in part as follows:

> "The same has been received by said carrier for itself and on behalf of connecting carriers for transportation subject to official tariffs, classifications and rules of the said Company and upon the following terms and conditions, which are admitted and accepted by the said shipper as just and reasonable. * * * That in the event of any unusual delay or detention of said live-stock caused by the negligence of said carrier or its employees or its connecting carriers or their employees or otherwise the said shipper agrees to accept as full compensation for all loss or damage sustained thereby the amount actually expended by said shipper in the purchase of food and water for said stock while so detained. * * * And E. G. Piper does hereby acknowledge that he had the option of shipping the above described live-stock at a higher rate of freight according to the official tariffs, classifications and rules of the said carrier and connecting carriers and thereby receiving the security of the liability of the said carrier and connecting railroad and transportation companies as common carriers of the said live stock upon their respective roads and lines, but has voluntarily decided to ship same under this contract at the reduced rate of freight above first mentioned."

Record, pp. 17 and 18.

The tariffs in effect at the time the shipments moved provided for a rate of $42 when the Uniform Live-stock Agreement was signed and that

> "Live Stock will be taken at the reduced rates fixed in the tariff only when a Uniform Live Stock Contract is executed by the station agent and the consignor, and when the release on the back of said contract is executed by man or men who are to accompany said live stock. If consignor refuses to execute a Uniform Live Stock Contract, the live stock will be charged ten (10) per cent. higher than the reduced rates specified herein provided, that in no case shall such higher charge be less than one (1) per cent. per one hundred pounds." Record, p. 19.

These tariffs were filed, published and posted as required by the Interstate Commerce Acts and order of the Interstate Commerce Commission dated June 2, 1908. Record, p. 18.

It appearing that the train carrying plaintiff's cattle arrived at destination about eight hours after the usual time of arrival and that on account of delay he obtained less for his cattle in the market than he would if the train had been on time and he could have put his cattle on the market earlier, plaintiff sought recovery for such loss claiming that the delay was due to the negligence of the defendant. Unless the plaintiff can avoid the provisions of the contract and tariff set out above limiting the damages he can recover for delay, he cannot recover in this action. He sought to do this by claiming these provisions were unreasonable and against public policy and therefore void.

The defendant properly set up a claim that State Statutes or public policy as declared by State Courts affecting conditions of Interstate Commerce shipments, had been superseded by Federal Statutes, particularly the Carmack Amendment, and that Federal Statutes had constituted the Interstate Commerce Commission the tribunal for determination of reasonableness of provisions of bills of lading covering Interstate Commerce shipments, and as the Interstate Commerce Commission had not declared unreasonable the provisions of the bill of lading relied upon in this case, they must stand and control.

The Supreme Court of Vermont construed the bill of lading as a stipulation against negligence, denied defendant's claim that it was a limitation as to the amount of recovery and denied de-

fendant's contention that the Interstate Commerce Commission alone was authorized to pass upon reasonableness of the provision.

The plaintiff in error claims that the Supreme Court of Vermont erred in its construction of the bill of lading; in determining the measure of liability of the carrier under the bill of lading; because in construing that bill of lading, due effect was not given the Carmack Amendment; because it did not correctly apply the Interstate Commerce Act, and particularly the Carmack amendment under which the plaintiff in error set up a right.

Southern Ry. vs. Prescott, 240 U. S., 632,
Northern Pac. Ry. Co. vs. Wall, 241 U. S., 87,
Georgia, Fla. & Ala. Ry. Co. vs. Blish Co., 241 U. S., 190,
Jones Nat'l. Bank vs. Yates, 240 U. S., 541.

The clause in the Uniform Live Stock Contract that, "in the event of any unusual delay or detention of said live stock caused by the negligence of said carrier * * * said shipper agrees to accept as full compensation for all loss or damage sustained thereby the amount actually expended by said shipper in the purchase of food and water for said stock while so detained," is neither in form nor legal effect, a stipulation exempting the carrier from liability for negligence.

The Supreme Court of Vermont in its opinion referring to this clause, declares, "In form it is a stipulation against negligence, and we think that in legal effect it is such." There is no foundation for such a statement. The language of the clause interpreted in accordance with the natural meaning of the words used, precludes it. The words "unusual delay or detention of said live stock caused by the negligence of said carrier," define a situation for which legal liability will exist. What follows is an agreement as to the basis of computing damages, once the liability has been fixed. Until the liability is determined the damage clause has no application. Its terms have no relation to a defense to liability. Nor is it in legal effect a stipulation against negligence. It is of course true that the substitution of any arbitrary measure of damages in place of the actual amount may alter the ultimate financial responsibility for negligence, but it cannot be said that such a measure is in itself a legal defense against liability.

Pierce Co. vs. Wells, Fargo & Co., 236 U. S. 278.
Cincinnati, N. O., & T. P. Ry. Co. vs. Rankin, 241 U. S., 319.

The clause in question is analogous to a released valuation clause and under the decisions is therefore lawful.

It is now well established law, that where the shipper has a choice between two rates, the higher of which imposes common law liability, the carrier may under the lower rate establish by tariff provision a limitation upon the amount of damages recoverable.

Adams Express Co. vs. Croninger, 226 U. S., 491.
Wells, Fargo & Co., vs. Neiman-Marcus Co., 227 U. S., 469.
Kansas Southern Ry. v. Carl, 227 U. S., 639.
M., K., & T. Ry. vs. Harriman, 227 U. S., 657.
C., R. S., & P. Ry. vs. Cramer, 232 U. S., 490.
Boston & Maine R. R. vs. Hooker, 233 U. S., 97.
Great Northern Ry. vs. O'Connor, 232 U. S., 508.

It has been expressly held that such a limitation or agreed valuation, is not a stipulation against liability for negligence.

The reasoning in the decisions seems to be that, where the shipper has the option of shipping at a higher rate, subject to the carrier's common-law liability, there is no principle of public policy or statute which precludes the carrier from setting a limit on the amount of damage recoverable when the shipper elects to avail himself of a lower rate. The carrier's risk has a direct relation to the rate and the publication of a lower rate, acceptance of which is optional with the shipper, entitles the carrier to stipulate for a lesser risk.

The clause under consideration in this case is in every way analogous.

In claims for loss or damage the total loss to the shipper is the actual value of the portion of the shipment destroyed or injured. However he recovers not that value but the released valuation to which he has agreed. In claims for delay the total loss to the shipper is the extra expense of caring for his stock, plus any loss which

he may suffer through market fluctuation. Under the clause in question he recovers not the total loss, but an amount to which he has agreed, namely his actual expenditure. In a claim for loss or damage the released valuation is an arbitrary sum, bearing a relation to the average value of such shipments. In a claim for delay the clause in question is a varying amount bearing a relation both to the extent of the delay and the average loss attributable thereto. If the shipper desires more complete protection he may pay the higher rate and obtain it. Both classes of limitation are adjustments of the carrier's risk to the rate charged. Such adjustments are sanctioned by the law.

Kansas Southern Ry. vs. Carl, supra.
Boston and Maine R. R. vs. Hooker, supra.

If it is proper for a carrier to limit its liability, in case of death or injury, it is also proper for it to limit its liability in case of delay.

It is immaterial to many shippers of live stock if it does not arrive at destination by a certain time. They suffer no loss if there is a day or more delay in delivery. Others ship cattle for a special market and a delay of a day or less may mean a substantial loss. The risks involved in these two classes of shipments are quite different and the carrier has a right to charge a higher price for the latter class than it does for the former.

It has been held "that the legality of the contract does not depend upon a valuation which shall have a relation to the actual worth of the property." It has also been held that if the limitations were unreasonable, it is for the Interstate Commerce Commission to correct them upon proper proceedings.

Pierce vs. Wells, Fargo & Co., 236 U. S., 278.

The carrier may fix any amount as the limit of its liability, graduating its rates in accordance with the limitations of its liability, and the Courts must enforce these limitations until the Commission declares them unreasonable.

In this live stock contract and tariff, the carrier does not exempt itself from liability for delay, but by reason of a lower rate

being paid, limits its liability to the cost of food and water. This must be recognized and enforced by Courts, at least until the Interstate Commerce Commission acts, although the amount in some cases may be small as compared with actual loss.

Respectfully submitted,

E. W. LAWRENCE,

Attorney for Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No. 546

BOSTON & MAINE RAILROAD, PLAINTIFF IN ERROR,

vs.

E. G. PIPER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

BRIEF OF DEFENDANT IN ERROR.

The plaintiff shipped a carload of cattle from Middlebury, Vermont, to Union Market, Mass., paying $42 freight charges and signing a uniform live stock contract (so called) providing in part as follows:

> "That in the event of any unusual delay or detention of said Live Stock, caused by the negligence of the said carrier, or its employes, or its connecting carriers, or their employes, or otherwise, the said shipper agrees to accept as full compensation for all loss or damage sustained thereby the amount actually expended by said shipper in the purchase of food and water for said stock, while so detained."

There was a delay of eight hours in the arrival of the so called stock train at Union Market and because of this delay Plaintiff seeks to recover damages because his cattle could not be sold upon the Market as intended and they could have been sold had there been no delay of the train. Plaintiff introduced evidence to show that the delay was caused by the negligence of the Defendant.

The train was overloaded, with more cars than the engine could draw, and was repeatedly stalled on that account. (Trans. p. 30, 31, 8, 9.)

It was delayed at stations in doing local work on ordinary freight, not live stock. (p. 30, 44.)

The stalling of the cars was the result of overloading (p. 31, 44.)

Although the train was a live-stock train, running upon a regular schedule, it was converted into a mixed freight, and negligently overloaded and provided with such defective motive power that on the grades they had to stop to get up steam. (p. 31.)

It appearing that the delay and hence the damage was due to the negligence of the defendant and its servants, the plaintiff claims that the clause above quoted from the contract of shipment, and relied upon by the defendant as a defense to plaintiff's claim of right to recover damages for delay, does not prevent the plaintiff from a right to recover and that the rule as laid down by the Federal Courts in contracts of inter-state shipments where the carrier attempts by special contract to limit his liability for negligence on his part, or his servants or employes, is stated by Justice Lurton to be as follows:

> "That such a carrier may, by a fair, open, just, and reasonable agreement, limit the amount recoverable by a shipper in case of loss or damage to an agreed value, made for the purpose of obtaining the lower of two or more rates of charge porportioned to the amount of the risk."
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> *Adams Express Co. v. Croninger, 226 U. S. 491, and cases cited.*

Ball v. The Wabash, St. Louis & Pac. Ry. Co., is a case on all fours with the one at bar. The delay claimed was from two to three hours, but, it being very hot and the yards crowded with other cars, fourteen hogs suffocated and died, entailing a loss of $119.31. Defendant relied as here upon the food and water clause, but the opinion states that the food and water clause is only valid as to *damages not caused by negligence of defendant.* Any damage that might have accrued to the plaintiff's stock on account of any circumstances, or on account of acts of the defendant, not the result of negligence on its part, would be limited by the special contract. The defendant was at liberty to show the reason for delay if any existed. But the Court having the evidence before it upon the question of negligence, without the proof of which the plaintiff could not recover, and having necessarily found that the damage was caused by the negligence of the defendant, this Court cannot undertake to say that finding was erroneous. All concur. No later case has questioned the soundness of that opinion.

In an action for loss of stock in transit, where contract which limited carrier's liability was not fairly entered into with freedom of choice, and

valuation was arbitrary and plainly for purpose of limiting carrier's liability, the Court did not err in excluding the contract from consideration of the jury.

McGrath v. Northern Pac. Ry. Co 141 *N.W.* 164.

In an action where there is a plea of a special contract in defence, limiting or conditioning the carrier's liability, the burden is upon the carrier not only to show a valid special contract, but also to allege and prove the facts and circumstances showing the stipulations to be reasonable.

Houtz v. Union Pacific R. R., 33 Utah, 175, 17 L. R. A. (N. S.) 628.

The clause in the contract which is relied upon by the Defendant is not "open, just, fair, and reasonable," because it is a limitation, instead of an exemption as claimed by the Plaintiff, it is not based upon the agreed valuation of the stock in question as set out in said contract. (*See Defendant's Exhibit B.*); because it induces negligence and want of due care on the part of the Defendant carrier; and because it is an attempt manifestly for the purpose of evading responsibility for its negligence.

It is plain that the United States Supreme Court does not hold that a carrier might make a valid contract to exempt himself from liability. In fact, exemptions from liability are prohibited by Sections 20 and 22 of the Hepborn Act.. The rule of limitation is, in that case, no different from what it was previously. Any "fair, reasonable and just agreement with the shipper which does not include exemption against the negligence of the carrier or his servants" is permissible, and nothing more.

It, is, therefore, clear that a clause in a contract providing for absolute exemption from the result of negligence, would be void. It is equally true that a clause, which in view of the surrounding circumstances, amounts to an absolute exemption from negligence, is also void. This is the doctrine of the Supreme Court and the weight of authority generally.

Railroad Company vs. Lockwood, 17 Wallace, 357.
York Co. vs. Central Railroad, 3 Wallace, 107.
Bank of Ky. vs. Adams Exp. Co., 93 U. S., 174.
Hart vs. Penn. R. R., 112 U. S., 331.
Bernard vs. Adams Exp. Co., 205 Mass., 254.
Greenwald vs. Barrett, 199 N. Y., 170.
Adams Express Co. vs. Croninger, 226 *U. S.* 491.

Kansas City So. Ry. Co. vs. Carl, 227, U. S. 639, 57, L. ed.
Bernard vs. Adams Exp. Co. (Mass) 91 N. E. 325, 28 L. R. A. (N. S.) 293, 18 Am. Cases 351.
Cook vs. N. P. Ry. Co., (N. D.) 155 N. W. 867.

An agreement to release a carrier from a part of the loss due to such negligence is no more permissable than one making the exemption complete.

Kansas City So. Ry. Co. vs. Carl, supra.

That the clause in question amounts to an absolute exemption from liability from negligence appears, in this case, from the undisputed evidence. The distance of the haul on defendant's railroad from Bellows Falls to Union Market is 108 miles (Trans. p. 2). Plaintiff testified and his testimony is uncontradicted, that between Bellows Falls and Union Market there was no place provided with the necessary facilities to feed and water stock.

The following is an extract from his testimony, page 68:

"Q. Is there between Bellows Falls and Union Market, on trains of cars of live stock, or on March 25, 1912, was there any facilities or accommodation whereby you could feed and water your stock.

No, sir, there is no place that I know of.

Q. Could you do it on the train?

A. No, sir.

Q. Why not?

A. Because there is no facilities.

Q. Between Bellows Falls and Union Market is there any place for any such thing?

A. Cold River is the only place.

Q. Where is Cold River?

A. About a mile below Bellows Falls, right in the yards.

Q. Then between that point and Union Market is there any place whereby it is possible to feed and water your stock?

A. Not that I know of."

Without question this evidence tended to show that defendant provided no place where cattle could possibly be fed and watered. Under the circumstances of this case, there was, therefore, nothing for the jury on that subject. This was a matter within the peculiar knowledge of the defendant, and if defendant would raise an issue, the evidence is easily available.

The reasonableness or unreasonableness of such a contract must depend upon the surrounding circumstances. There might be some question on that score if the shipment permitted of unloading, feeding and watering the stock, but where it does not permit of any such thing, and the defendant fails to supply or furnish any facilities for feeding and watering, then it is a mere pretense of limitation, for, its actual meaning in the circumstances, is a limitation to nothing at all.

Would this be a *fair, just* and *reasonable* agreement, not amounting to exemption? That was the question for the Court below, if, indeed, there is any question about it.

Defendant did not claim it was a question of fact to be submitted to the jury, and cannot claim error on that score. Both sides claim it is a question of law to be determined by the Court, and the Court did determine, upon the uncontradicted evidence, that it was void, and was not "a fair, just and reasonable agreement not amounting to exemption."

That the provision of the contract of shipment relied upon by the defendant does offend the rule in question is further demonstrated by the consideration that the agreement is to accept "as full compensation for all loss or damage sustained" by the delay, "the amount actually expended by said shipper in the purchase of food and water for said stock, while so detained," to comply with the U. S. penal 28 hour law. That is the defendant simply agrees to make good an item of expense the carrier would have to pay, if shipper did not, to comply with the law,—an expense occasioned entirely by defendant's delay. *The defendant in this provision does not provide one cent of compensation for plaintiff's loss or damage occasioned thereby.* This provision is in a value—agreed—upon live stock contract limiting the value of cattle or cows to $75 each and of calves to $5 each which agreement as to values is like those which have been approved of by the U. S. Supreme Court. It should not be nullified as it would be were the food and water clause to be held valid.

That this is the view that the Interstate Commerce Commission would take of this case is well shown in its opinion entitled *"Protection of Potato Shipments in Winter,"* decided February 2, 1914, 29, I. C. C. 504 (507). In this opinion, the Commission authorized carriers to offer a reduced tariff for transporting potatoes in cars where shippers assumed liability as to weather, *the carriers to remain liable of course for any loss or damage resulting from their own negligence.* The Commission adds this sentence, full of meaning: *The carriers in the wording of the provision should make it plain that they will not seek in any event to escape responsibility for loss occasioned by their negligence or delay in the movement of the shipment.*

The Commission cites M. K. & T. Co. v. Harriman, 227 U. S. 657 at page 672, that such liabilities in contracts are good, *if just and reasonable and if they do not exempt from loss or responsibility due to negligence.*

The following recent cases may be helpful.

"It may be stated with respect to the general question here involved that the law requires that the carriers *shall establish and afford to all shippers rates that are reasonable and unconditional* as to the amount *of carrier's liability in case of loss or damage.*"

Norcross Bros. Co. v. *L. & N. R. R. Co., 29 I. C. C., 209.*
National Baggage Committee v. *A. T. & S. F. Ry. Co., 32 I. C. C. 159.*

A common carrier may not by special contract exempt itself from its common law liability for consequence of its own negligence or that of its agents.

Union Pacific R. R. Co. v. *Libby 146, P. 1076.*

A common carrier may by special contract, in absence of statute, limit its liability against all risks except negligence or misconduct.

Young v. Maine Central R. Co. 113 Me. 113.

A carrier cannot defeat recovery for delay, where delay deprived shipper of benefit of afternoon market.

McFall v. C. B. & Q. R. R. 181 Mo. App. 244

It therefore appears that if the agreement before us is, in legal effect, a contract exempting the carrier in whole or in part, from its negligence, it is repugnant to law and the fact that it is a part of the regulations filed with and approved by the Interstate Commerce Commission gives it no force or validity; it is wholly inoperative and void.

It is to be observed that it is not a provision limiting recovery to an agreed valuation, at least it is not such in form and we contend that it is not such in essence. In form it is a stipulation against negligence, and we contend that in legal effect it is such. The evidence having without dispute tended to show that the delay was due to the negligence of the Railroad Company, and to give effect to the provision in question would be to excuse in part, if not wholly, this shortage of duty on the part of the Carrier. As applied to the case made by the evidence it was an arbitrary pre-adjustment of the damages for a negligent delay of the shipment and void. Bosley v. B. & O. R. Co., (W. Va.) 46 S. E. 613, 66 L. R. A. 871; Jennings v. Grand T. Ry. 52 Hun. 227, 5 N. Y. S. 140.

PART TWO

As to the claim of the defendant that the Courts of the State of Vermont were without jurisdiction of the questions involved in this case, we contend that the State Courts have jurisdiction of these matters unless they have been deprived of this jurisdiction by the Interstate Commerce Act. The provisions of the Interstate Commerce Act providing for remedies are found in sections 8, 9 and 22 of the Act, See U. S. Statutes at large, 379.

We contend that the State Courts have jurisdiction of the questions involved in this case and in support of this contention we quote from the opinion of the U. S. Supreme Court in the case of Pennsylvania Ry. Co. v. Puritan Coal Mining Co. 237 U. S. 121, (1915), Lamar J.

Page 129. "But sections 8 and 9 standing alone might have been construed to give the Federal Courts exclusive jurisdiction of all suits for damages occasioned by the carrier violating any of the old duties which were preserved and the new obligations which were imposed by The Commerce Act. And evidently, for the purpose of preventing such a result, the Proviso to section 22 declared that 'nothing in this act contained shall in

any way abridge or alter the remedies now existing at common law or by statutes, but the provisions of this act are in addition to such remedies.'

"That proviso was added at the end of the statute,—not to nullify other parts of the Act, or to defeat rights or remedies given by preceding sections —but to preserve all existing rights which were not inconsistent with those created by the statute. It was also intended to preserve existing remedies, such as those by which a shipper could, in a state court, recover for damages to property while in the hands of the interstate carrier; damages caused by delaying shipment; damages caused by failure to comply with its common law duties and the like. But for this proviso to Section 22 it might have been claimed that, Congress having entered the field, the whole subject of liability of carrier to shippers in interstate commerce had been withdrawn from the jurisdiction of the state courts and this clause was added to indicate that the Commerce Act, in giving rights of action in Federal Courts was not intended to deprive the state courts of their general and concurrent jurisdiction. Galveston &c R. R. v. Wallace, 223 U. S. 481.

"Construing, therefore, sections 8, 9 and 22 in connection with the statute as a whole, it appears that the Act was both declaratory and creative. It gave shippers new rights, while at the same time preserving existing causes of action. It did not supersede the jurisdiction of state courts in any case, new or old, where the decision did not involve the determination of matters calling for the exercise of the administrative power and discretion of the Commission; or relate to a subject as to which the jurisdiction of the Federal courts had otherwise been made exclusive. Compare Abilene Case, 204 U. S. 439, 446; Robinson v. Balt. & Ohio 222 U. S. 506; 36 Stat. 551 (15); 38 Stat. 220."

See also Galveston, Harrisburg and San Antonio Railway Company v. J. D. Crow, and Notes 56 Law Ed. 516 (1911).

We therefore claim that there was no error in the judgement of the Supreme Court of the State of Vermont in this case.

Respectfully submitted,

MARVELLE C. WEBER,

Attorney for Defendant in Error.